

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THE SHERWIN-WILLIAMS
COMPANY,

Plaintiff,

v.

JB COLLISION SERVICES, INC., *et. al.*,

Defendants,

and

THE SHERWIN-WILLIAMS
COMPANY,

Plaintiff,

v.

JTT, INC., *et. al.*,

Defendants.

Civil No. 13-CV-1946-LAB(WVG)
13-CV-1947-LAB(WVG)

ORDER IMPOSING SANCTIONS
AGAINST DEFENDANTS FOR
FAILURE TO PRODUCE
DISCOVERY DOCUMENTS

I. INTRODUCTION

A. BACKGROUND

Plaintiff Sherwin-Williams (“Plaintiff”) makes paints and coatings for cars. (Doc. No. 31 at 1.) Defendants JB Collision Services, Inc. (“Defendant JB Collision”) and JTT, Inc. (“Defendant JTT”) are auto body shops. *Id.* On or about September 10,

1 2008, Defendant JB Collision entered into a Supply Agreement with Plaintiff. (Doc.
2 No. 1 at 2.) Pursuant to the Supply Agreement, Defendant JB Collision agreed to
3 exclusively use Plaintiff's automotive paint and coating products from September 10,
4 2008, until the date upon which net sales, as defined by the Supply Agreement, totaled
5 \$1,300,000. Id. In consideration for Defendant JB Collision's agreement to
6 exclusively purchase all of its requirements for automotive paints, coatings, and related
7 products for the duration of the contract term, Plaintiff agreed to provide products to
8 JB Collision at a discount. Id. at 3.

9 On or about May 29, 2011, Defendant JJT entered into a Supply Agreement
10 with Plaintiff. (Doc. No. 17 at 2.) Pursuant to the Supply Agreement, Defendant JJT
11 agreed to exclusively use Plaintiff's automotive paint and coating products from May
12 29, 2011, until the date upon which net sales, as defined by the Supply Agreement,
13 totaled \$250,000. Id. In addition, Defendant John Tyczki ("Defendant Tyczki") signed
14 a guaranty on May 10, 2011, personally guaranteeing Defendant JJT's performance
15 under the Supply Agreement. Id.

16 From September of 2008 until January of 2013, Defendants purchased
17 automotive paint, coatings, and related products pursuant to the Supply Agreements
18 with Plaintiff. (Doc. No. 1 at 3; Doc. No. 17 at 2-3.) In January of 2013, Plaintiff
19 alleges that Defendants breached the parties' Supply Agreements by discontinuing all
20 of their requirements for automotive paints, coatings, and related products exclusively
21 from Plaintiff. Id. By letter dated February 28, 2013, Plaintiff notified Defendants of
22 their breach of contract. Id.

23 On August 20, 2013, Plaintiff filed two complaints asserting breach of contract
24 claims against Defendants JB Collision, JJT, and Tyczki, and Defendants filed
25 counterclaims for breach of contract, breach of implied warranties of merchantability
26 and fitness, concealment and fraud, intentional misrepresentation, negligent misrepresentation,
27 breach of covenant of good faith and fair dealing, and unjust enrichment.
28

(Doc. No. 31 at 2.) The crux of Defendants' counterclaims is that Plaintiff's products were not satisfactory. Id.

B. PLAINTIFF'S MOTION FOR SANCTIONS

On October 10, 2014, Plaintiff filed a Discovery Motion and argued that Defendants should be held in contempt and sanctioned for withholding discovery and lying to the Court. (Doc. No. 61-1 at 5, 10-11.) Plaintiff argued that, for months, it sought to obtain Defendants' records reflecting any purchases of paint and associated products from sellers other than Plaintiff between September of 2008 and March of 2013, and that Defendants repeatedly swore under oath that no documents existed because during those years they exclusively purchased and used Plaintiff's paint and associated products. Id. at 5. Plaintiff asserted that Defendants told this Court the same thing in discovery dispute briefing and oral argument. Id. However, Plaintiff claimed that Defendants had recently disclosed documents which demonstrate that they did purchase thousands of dollars of paint and associated products from Keystone and Spies-Hecker (an Axalta/DuPont paint line) from September of 2008 through March of 2013. Id. In its Discovery Motion, Plaintiff sought reasonable attorney's fees for bringing its Discovery Motion. Id.

In their Opposition to Plaintiff's Discovery Motion, filed on October 17, 2014, Defendants denied lying to the Court, and stated they did not purchase any paint products or coatings from any supplier other than Plaintiff during the terms of the Agreements. (Doc. No. 70 at 2.) Defendants noted that they did purchase after-market or used vehicle parts from a competitor, which were "indisputably unrelated products." Id. Defendants claimed that they reasonably believed that these parts and other non-paint products purchased from Plaintiff's competitor did not fall within the scope of Plaintiff's discovery request, as the term "related products" was vague, ambiguous, overbroad, and undefined in the request, as stated in Defendants' objections. Id.

Defendants also claimed that they "did purchase products from Keystone/LKQ during the terms of the Agreements; however, these, at least under Defendants' understanding, were not paint 'or related products.'" (Doc. No. 70 at 6.) They asserted

1 that the products they did purchase from Plaintiff's competitors were after-market parts,
2 used parts, and waste disposal products, which were not part of Defendants'
3 Agreements with Plaintiff. Id. Defendants claimed that they used their subjective
4 understanding when responding to these requests. Id. at 7.

5 During a Discovery Hearing on October 29, 2014, Plaintiff showed the Court
6 several sample Keystone invoices that had recently been produced by Defendants. In
7 response, Defendants claimed that any products that they purchased from Keystone that
8 were covered by the Supply Agreement with Plaintiff, were purchased during the time
9 period that the parties first entered into the Supply Agreement, and therefore these
10 purchases were justified and excusable. Defendants also represented that they only
11 recently discovered the existence of these Keystone documents.

12 The Court reviewed all of the briefing related to this discovery dispute, as well
13 as the corresponding exhibits and other relevant documents filed in the consolidated
14 cases. With the fact discovery deadline set for November 7, 2014, a mere nine days
15 after the Discovery Hearing, the Court deemed it advisable to issue its final rulings
16 from the bench at the conclusion of the Discovery Hearing. On October 30, 2014, the
17 Court issued a Discovery Order memorializing its rulings, and took Plaintiff's request
18 for a contempt Order and sanctions under advisement. (Doc. No. 85 at 7.) The Court
19 ordered Plaintiff to lodge with the Court copies of the Keystone documents for an *in*
20 *camera* review, and to highlight the products that it believed Defendants purchased in
21 violation of their contracts with Plaintiff. Id. The Court instructed that an Order would
22 issue after conducting an *in camera* review of the Keystone documents. Id.

23 After conducting an *in camera* review of the Keystone documents that
24 Plaintiff provided to the Court on November 3, 2014, the Court issued an Order
25 Granting Plaintiff's Request for Imposition of Sanctions Against Defendants for Failure
26 to Produce Discovery Documents; Denying Plaintiff's Request for an Order of
27 Contempt Against Defendants on November 14, 2014. (Doc. No. 100.) The Court
28 determined that sanctions were appropriate and would be imposed against Defendants
for their failure to produce the Keystone invoices in response to Plaintiff's discovery

1 request, and in violation of this Court's August 15, 2014, Discovery Order (Doc. No.
2 47). Id. at 8. The Court found that the Keystone documents were clearly requested by
3 Plaintiff in its RFP No. 10, and the Court had unequivocally ordered Defendants to
4 respond to this request. (Doc. No. 100 at 9; citing Doc. No. 47 at 9.) The Court also
5 found that Defendants made false representations to Plaintiff and to the Court regarding
6 the existence of these Keystone documents. Id.

7 In its Order Imposing Sanctions, the Court Ordered Plaintiff to submit to the
8 Court detailed time calculations and descriptions of activities in attempting to obtain
9 the Keystone documents, and in filing its Motion to Compel and corresponding
10 briefing. (Doc. No. 100 at 10.) On November 21, 2014, Plaintiff lodged its time
11 calculations in response to the Court's Order, along with affidavits of Plaintiff's
12 counsel. On November 24, 2014, Defense counsel contacted the Court to inquire as to
13 whether Defendants would be given the opportunity to respond to Plaintiff's time
14 calculations. On December 1, 2014, the Court issued an Order allowing Defendant to
15 lodge with the Court a Response to Plaintiff's time calculations by December 8, 2014.
16 (Doc. No. 106.)

17 **II. RULING**

18 On November 21, 2014, Plaintiff lodged with the Court an Affidavit of
19 Plaintiff's counsel, Mr. Ed Woodworth, along with a corresponding time sheet
20 containing billing entries for Mr. Woodworth, Mr. Jeff Wilson, Mr. Nicholas Kurk, Mr.
21 Michael Jacob, Ms. Heather Kleinhardt, Ms. Christine David, Ms. Andrea Arndt, and
22 Mr. Andrew Kotwicki. Plaintiff also lodged a Affidavit of Plaintiff's local counsel, Mr.
23 Michael Murray, along with a corresponding time sheet containing billing entries for
24 Mr. Murray.

25 Plaintiff seeks \$16,951.00 in attorneys' fees incurred in attempting to obtain
26 certain Keystone documents and in filing its Discovery Motion and corresponding
27 briefing. Defendant opposes the requested amount, asserting that Plaintiff's time
28 calculations are excessive, duplicative, and not sufficiently stated with particularity as
they are block-billed, vague, and not sufficiently itemized, as well as unnecessary

1 and/or unrelated to obtaining the Keystone documents. (Defendants' Opposition at 2.)
 2 The Court has reviewed Plaintiff's Affidavits and time sheets, as well as Defendants'
 3 Opposition, and issues the rulings set forth below.

4 **A. MR. MURRAY'S AFFIDAVIT AND TIME SHEET**

5 The Court strikes all billing entries listed on Mr. Murray's time sheet. The
 6 Court finds all of these billing entries to be duplicative and excessive, and/or unrelated
 7 to attempts to obtain the Keystone documents.

8 On December 15, 2014, the Court held a telephonic Discovery Conference to
 9 discuss Defendants' disputes with some of Plaintiff's discovery responses. See Doc.
 10 No. 116. Mr. Woodworth and Mr. Murray participated in the Discovery Conference
 11 on behalf of Plaintiff. During a discussion about an accelerated deadline by which
 12 Plaintiff had to respond to Defendants' discovery requests, Mr. Murray acknowledged
 13 that he was not well-versed in the particular discovery dispute. Faced with the
 14 scheduling conflicts of Mr. Wilson and Mr. Woodworth, and Mr. Murray's acknowl-
 15 edgment that he was not able to complete the discovery himself due to his limited
 16 involvement with the issues, the Court set a later deadline for Plaintiff to produce the
 17 discovery. While the Court is aware that the disputes discussed on December 15, 2014,
 18 were unrelated to the Keystone documents, this instance and Mr. Murray's acknowl-
 19 edgment lend support to the Court's prior observations that Mr. Murray and his firm
 20 of Lanak & Hanna, PC, were not as intimately involved in the discovery in this case as
 21 Mr. Wilson and Mr. Woodworth and their firm of Young Basile Hanlon & MacFarlane,
 22 PC.

23 Additionally, the Court has observed that Mr. Murray, although present in the
 24 undersigned's courtroom for several of the Discovery Hearings, has never argued
 25 before the Court in this litigation, and the Court has had little to no interaction with him
 26 throughout the duration of discovery. These observations support Defendants'
 27 arguments and the Court's determination that Mr. Murray's time calculations lodged
 28 with the Court are duplicative and excessive. Plaintiff will not be reimbursed for Mr.
 Murray's time calculations.

B. MR. WOODWORTH'S AFFIDAVIT AND TIME SHEET

The Court strikes several billing entries listed on Mr. Woodworth's time sheet because the Court finds some of the entries to be duplicative and excessive, and/or unrelated to attempts to obtain the Keystone documents. Further, Plaintiff failed to comply with the Court's Order to provide "detailed time calculations and descriptions of activities in attempting to obtain these documents, and in filing its Motion to Compel and corresponding briefing." (Doc. No. 100 at 10.) Many of Plaintiff's billing entries reflect vague, ambiguous, and skeletal descriptions of activities, and the Court was unable to determine whether the entries were related to Plaintiff's attempts to obtain the Keystone documents. The Court should not be tasked with a meticulous review of each billing entry and required to guess as to whether the entries relate to the Keystone documents. While counsel did provide signed affidavits, as noted in Defendants' Opposition, some of the billing entries clearly do not relate to the Keystone documents.^{1/}

Despite the Court's explicit Order that Plaintiff shall provide detailed time calculations and descriptions, the Court examined the case docket and the billing entries one by one in an effort to match each billing entry with a corresponding docket entry. As the party requesting the monetary sanctions, Plaintiff should have done, and was ordered to, complete all of this work for the Court. In part as a sanction for failure to comply with the Court's Order to provide detailed time calculations and descriptions, and for squandering the Court's time as a result, and in part because the Court finds many of the billing entries to be duplicative, excessive, or unrelated to the Keystone documents, the Court will not Order Defendants to pay the full amount of Plaintiff's request for monetary sanctions. The Court does, however, find many of Plaintiff's

^{1/} For example, Mr. Woodworth's time sheet lists billing entries to prepare for and attend an October 3, 2014, Discovery Conference before the Court. However, as Defendants' note in their Opposition, and the Court has affirmed after a review of the case docket and corresponding notes, the October 3, 2014, Discovery Conference was not related to the Keystone documents.

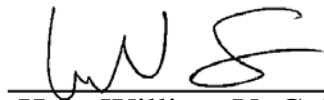
1 billing entries to be related to the Keystone documents, and therefore awards Plaintiff
2 those specific amounts in attorney's fees. The Court finds as to the entries itemized in
3 Appendix A, that Plaintiff's billing entries are reasonable for the work performed, and
4 that Plaintiff's attorney's hourly rates are likewise reasonable.

5 **C. IMPOSITION OF SANCTIONS**

6 After a meticulous review of the record, Plaintiff's time calculations, and
7 Defendants' Opposition, the Court hereby AWARDS Plaintiff the amount of **\$6,824.50**
8 in attorney's fees pursuant to Federal Rule of Civil Procedure 37, in accordance with
9 Appendix A. Defendants are to coordinate with Plaintiff's counsel regarding the
10 payment of this sanction no later than January 14, 2015, and to effect payment no later
11 than January 31, 2015.

12 IT IS SO ORDERED.

13 DATED: January 7, 2015

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16 Hon. William V. Gallo
U.S. Magistrate Judge
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APPENDIX A

Attorney Name	Accounting Date	Apportioned Hours	Apportioned Amount	Description
Ed Woodworth	7/02/2014	0.2	\$40.00	Review Defendant's discovery responses
Jeff Wilson	7/16/2014	0.4	\$100.00	Multiple conference calls with client regarding discovery disputes and potential third-party claims; preparation for meet and confer conference with opposing counsel regarding discovery dispute
Jeff Wilson	7/17/2014	2	\$500.00	Conference call with client re: discovery disputes; prepare for discovery conference with opposing counsel; draft proposed resolution to discovery requests; conduct meet and confer conference per local rules
Jeff Wilson	7/24/2014	1	\$250.00	Prepare for discovery dispute motion/hearing on JB/JJT objections and discovery responses
Ed Woodworth	7/30/2014	1.2	\$240.00	Draft/revise joint statement of discovery disputes; correspond with opposing counsel regarding the same;
Jeff Wilson	7/30/2014	1	\$250.00	Revise and finalize discovery motion; legal research regarding objections to discovery raised by opposing party; prepare for discovery conference with Judge
Jeff Wilson	8/07/2014	0.75	\$187.50	Preparation and research regarding discovery motion hearing in San Diego; travel to San Diego and review documents for production during travel

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Attorney Name	Accounting Date	Apportioned Hours	Apportioned Amount	Description
Jeff Wilson	8/08/2014	0.75	\$187.50	Preparation for hearing; appearance at motion hearing and work on issues arising from the same
Ed Woodworth	9/09/2014	2	\$400.00	Analysis and review of Keystone documents, discovery and analysis of missing Keystone PBE Documents
Jeff Wilson	9/24/2014	1	\$250.00	Attend deposition of Tyczki
Nicholas Kurk	9/25/2014	0.7	\$168.00	Completed document subpoenas to Keystone Automotive Industries Inc. and LKQ Corporation and served registered agent in Chicago.
Nicholas Kurk	9/26/2014	0.1	\$24.00	Phone call to the registered agents of Keystone Automotive Industries Inc. and LKQ Corporation re service of document subpoenas.
Heather Kleinhardt	9/29/2014	0.4	\$80.00	Strategized with Attorneys Jacobs and Woodworth regarding Show Cause Motion; Began review of John Tyczki's Deposition for Show Cause Motion
Jeff Wilson	10/02/2014	1.75	\$437.50	Prepare for depositions and continued work on all pending discovery disputes; research re: sanctions for Keystone issues
Heather Kleinhardt	10/03/2014	1	\$200.00	Continued review of John Tyczki deposition; Conferred with Attorney Woodworth regarding discovery disputes
Ed Woodworth	10/08/2014	0.4	\$80.00	Draft/revise discovery dispute motion

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Attorney Name	Accounting Date	Apportioned Hours	Apportioned Amount	Description
Ed Woodworth	10/08/2014	0.2	\$40.00	Draft correspondence to opposing counsel regarding discovery issues
Ed Woodworth	10/09/2014	0.2	\$40.00	Draft/revise discovery dispute motion
Ed Woodworth	10/09/2014	1	\$200.00	Discovery dispute conference and confer with Jeff Wilson regarding same
Jeff Wilson	10/09/2014	2	\$500.00	Work on all issues re deposition preparation. Conference call with client; work on motion to compel discovery
Ed Woodworth	10/10/2014	1.1	\$220.00	Draft/revise discovery dispute motion
Ed Woodworth	10/20/2014	0.5	\$100.00	Review Defendants' Response in Opposition
Ed Woodworth	10/20/2014	0.5	\$100.00	Draft/revise reply brief
Ed Woodworth	10/21/2014	2.5	\$500.00	Draft/revise reply brief
Ed Woodworth	10/22/2014	0.4	\$80.00	Draft/revise reply brief
Jeff Wilson	10/09/2014	1	\$250.00	Attend discovery dispute hearing
Ed Woodworth	11/03/2014	3	\$600.00	Assembly of Keystone Documents to File with Court
Ed Woodworth	11/21/2014	4	\$800.00	Prepare Keystone Time Entries and supporting affidavit (3.5); confer with local counsel regarding the same (0.5)
TOTAL			\$6,824.50	